88-2,028

No. _____

Supreme Court, U.S.
FILED
JUN 13 1989
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

EDDIE THOMPSON, JR.
PETITIONER

vs.

HONORABLE RAYMOND E. LAPE, JR.
KENTON CIRCUIT JUDGE
RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

EDDIE THOMPSON, JR.
P.O. Box 1221
Covington, Ky 41011
(606) 491-6278

COURT INDEX PRESS, INC. — 215 E. Ninth Street, Cincinnati, Ohio 45202 — (513) 241-1450

QUESTION PRESENTED

Does a State Court violate Article IV, § 1, U.S. Constitution, 28 U.S.C. 1738 and K.R.S. 422.040, when the State Court Judges refuse to give full faith and credit to the records and judicial proceedings of a Federal or State Court of the United States or the records and judicial proceedings of its own Courts?

TABLE OF CONTENTS

	Page
Question Presented	I
Table of Authorities	IV
Opinion Below	1
Jurisdictional Grounds in this Court	2
Statement of Facts	3
Reasons for Granting the Writ	7
Conclusion	16

APPENDIX

Petition for Writ of Mandamus	1a
Federal Judgment Ex. A	6a
Order by Judge Lape, June 2, 1987, Ex. B.	7a
Motion for Leave to file Reply to Response to Petition for Writ of Mandamus	8a
Decree by Judge Lape, Ex. 1	10a
Ex. 2 and 3	12a-14a
Order by Court of Appeals Denying Petition for Writ of Mandamus	16a
Unpublished Opinion of Kentucky Supreme Court Affirming	16a
Order by Judge Lape	18a

TABLE OF AUTHORITIES

Cases	Page
Abbott v. *Maranga*, 567 S.W. 2d 312 (CA KY 1978)	10, 13
Commonwealth v. *Thompson*, 17936	3, 4, 5
Commonwealth v. *Thompson*, 18227 A & B	3, 4, 5
Copley v. *Craft*, 341 S.W. 2d 71 (KY 1960)	11
Detroit Demolition Corp. v. *Burrough Corp.*, 392 Mich 769, 219 N.W. 2d 613	12
Durfee v. *Duke*, 375 U.S. 106 (1963)	2, 10
Edmonds v. *Stratton*, 457 S.W. 2d 228 (Mo. 1970)	14
First National Bank of Libby, Montana v. *Rector*, 710 S.W. 2d 100 (CA Texas 1986)	7
Haines v. *Kerner*, 404 U.S. 519, 520 (1971)	2, 12
Hancock National Bank v. *Farnum*, 176 U.S. 640	9
Hovey v. *Elliot*, 42 L ed 215	14
Johnson v. *Muelberger*, 340 U.S. 581	2, 10, 13
Milliken v. *Meyer*, 311 U.S. 457	2, 9, 14
Peters Production v. *Desnick Broadcasting*, 429 N.W. 2d 654 (Mich App. 1988)	8
In re Murchison, 349 U.S. 133, 75 S Ct 623, 99 L ed 942	2, 15

Page

Thompson v. *Covington Housing Development Corp.* 3, 5, 7, 12

Titus v. *Wallick*, 306 U.S. 282 . . . . . 9, 13

Transamerica Trade Co. v. *McCollum Aviation*, 424 N.E. 2d 740 7

Union National Bank v. *Lamb*, 337 U.S. 38, 98 L ed 278 2

Wenk v. *Ruby*, 431 S.W. 2d 302 (KY CA 1968) 9

CONSTITUTIONAL AND STATUTORY PROVISIONS

Federal

Article IV, § 1, U.S. Constitution 7, 14

First Amendment, U.S. Constitution 15

Fourteenth Amendment, U.S. Constitution 15

28 U.S.C. § 1738 . . . . . 7, 8, 14

State

Kentucky Constitution § 1, 2, 14, 26 . . . . . 14, 15

K.R.S. 426.381 4

K.R.S. 426.382 4

K.R.S. 454.350 4

Ky CR 52 . . . . . 6, 11

Ky CR 76.37(7)(h) 11

Ky CR 76.36(8) 11

K.R.S. 426.381 provides in part,

> The plaintiff in the execution may by an amended and supplemental petition filed in the action have the same redocketed and join with the execution defendant or defendants any person believed to be indebted to him or them, or to hold money or other property in which he or they have an interest, or hold evidences or securities for the same. Upon the filing of such amended petition the case shall be transferred to the equity docket and summons issued thereon. In such supplemental proceeding or in a separate suit in equity against such parties (at his option) the Plaintiff may have discovery and disclosure from the judgment creditor and his debtor or bailee, and may have any property discovered, or a sufficiency thereof, subjected to the satisfaction of the judgment.

K.R.S. 426.382 provides,

> The answer of each defendant shall be verified by his oath, and not by that of an agent or attorney, and the court shall, if necessary, enforce full and explicit discoveries in such answers by process of contempt.

K.R.S. 454.350 provides in part,

> Every Circuit and district judge shall, when at all possible, issue a written judgment or order in all civil actions which have been submitted for final adjudication within ninety (90) days from the date the action was taken under submission.

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

EDDIE THOMPSON, JR.
PETITIONER

vs.

HONORABLE RAYMOND E. LAPE, JR.
KENTON CIRCUIT JUDGE
— RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF KENTUCKY

Petitioner, Eddie Thompson, Jr., (hereinafter Petitioner) respectfully prays that a Writ of Certiorari issue to review the Judgment of the Kentucky Supreme Court entered in an unpublished Decision on March 16, 1988. (App. P. 17a)

OPINION BELOW

The Order of the Kentucky Court of Appeals was entered on October 6, 1988. (App. P. 15a)

Notice of Appeal was filed on November 4, 1988.

JURISDICTION

The federal question was raised in the trial court, (Kentucky Court of Appeals).

Petitioner sought a Writ of Mandamus in the Kentucky Court of Appeals, directed to the Honorable Raymond E. Lape, Jr., Kenton Circuit Judge, to show cause, if there be any, why he refused: (1) to give full faith and credit to a Federal Judgment, (Ex. A, App. P. 6a), docketed by Petitioner in the Kenton Circuit Court, and (2) to give full faith and credit to decrees entered by (himself) Kenton Circuit Court Judge Lape on or about August 3, 1979. (App. P. 10a)

Judgment was entered by the Kentucky Supreme Court on March 16, 1989. (App. P. 17a), and the Petition for a Writ of Certiorari is filed within ninety (90) days of that date.

Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3).

The following decisions of this Court sustain Jurisdiction.

Durfee v. *Duke*, 375 U.S. 106, 11 L ed 2d 186, 84 S Ct 242

Haines v. *Kerner*, 404 U.S. 519, 92 S Ct 504

Johnson v. *Muelberger*, 340 U.S. 581, 96 L ed 552

Milliken v. *Meyer*, 311 U.S. 457, 85 L ed 278

In re Murchison, 349 U.S. 133, 75 S Ct 623, 99 L ed 942

Union National Bank v. *Lamb*, 337 U.S. 38, 98 L ed 278

STATEMENT OF FACTS

On or about August 19, 1988, Petitioner, in a verified complaint, (App. P. 1a) sought a Petition for a Writ of Mandamus in the Kentucky Court of Appeals, to be directed to the Honorable Raymond E. Lape, Jr., Kenton Circuit Judge, to show cause, if there be any, why he: (1) refused to give full faith and credit to a Federal Judgment, (Ex. A) (App. P. 6a) docketed by Petitioner in Kenton Circuit Court. Case A, styled *Eddie Thompson, Jr.* v. *Covington Housing Development Corp.*, No. 87-CI-773 and (2) refused to give full faith and credit to a decree he (Judge Lape) had entered in Kenton Circuit Court on August 3, 1979, Case B, styled *Commonwealth of Kentucky, for the use and benefit of the City of Covington, Kentucky* v. *Patricia Thompson*, No. 17936 (App. P. 11a, 13a) and Case C, styled, *Commonwealth of Kentucky, for the use and benefit of the City of Covington, Kentucky* v. *Eddie Thompson*, No. 18227 A & B, (App. P. 15a) by entering appropriate Orders.

In Case A, *Thompson* v. *Covington Housing Development Corp.*, No. 87-CI-773, Petitioner had filed a supplemental pleading in Kenton Circuit Court, on May 7, 1987, seeking to have the Kenton Circuit Court Clerk issue a Writ of Execution on a Federal Judgment. (Ex A, App. P. 6a)

Covington Housing Development Corp. is an agent of the City of Covington.

On May 15, 1987, Mr. McMurtry, an Assistant City Solicitor, for the City of Covington, filed a Motion to Dismiss the supplemental pleading filed by Petitioner on a Judgment against Covington Housing Development Corp.

On May 21, 1987, Petitioner responded to Mr. McMurtry's Motion to Dismiss and filed a Motion to Compel the Kenton Circuit Court Clerk to issue a Writ of Execution on the Federal Judgment. No response was filed to the motion to compel the clerk to issue the Writ of Execution.

After a hearing on June 1, 1987, Judge Lape told Mr.

McMurtry to prepare an Order denying relief. Mr. McMurtry prepared an Order, Ex. B, (App. P. 7a). The Order read in part, "It is ORDERED and ADJUDGED that all pending motions of the parties are Dismissed. Judge Lape crossed out Dismissed and penned in OVERRULED. (App. P. 7a).

On November 30, 1987, Petitioner amended his supplemental pleadings pursuant to K.R.S. 426.381 and propounded interrogatories to the City of Covington, Joseph Condit and Ronald Turner. No answer was filed by these Defendants. (K.R.S. 426.382), and on December 18, 1987, Mr. McMurtry filed a Motion to Dismiss and for Judgment on the Pleadings. (No pleadings had been filed by any Defendant)

On March 10, 1988, Judge Lape held another hearing, where it was undisputed that the Judgment against the Covington Housing Development Corp. (Ex. A, App. P. 6a) was valid, the City of Covington was liable and that city officials has wrongfully used their offices to prevent Petitioner from collecting the Judgment.

On April 13, 1988, Judge Lape dismissed with prejudice the supplemental pleadings. (denied full faith and credit to the Federal Judgment — App. P. 6a)

Petitioner filed a timely motion for a rehearing. At a hearing on May 2, 1988, Petitioner requested Judge Lape to state his legal reasons for not giving full faith and credit to the Federal Judgment. (App. P. 6a) Judge Lape refused to enter a final order in violation of K.R.S. 454.350. (See Petition for Writ of Mandamus, App. P. 1a)

Case B, *Commonwealth* v. *Thompson*, No. 17936 and Case C, *Commonwealth* v. *Thompson*, No. 18227 A & B, involved alleged false criminal charges against Petitioner and his wife by city officials to aid Peoples Liberty Bank and Richard Nelson in illegal foreclosure proceedings in 1977 and 1978. (App. P. 11a, 13a, 15a)

Petitioner had filed 3 lawsuits in Federal Court (*Thompson*

v. *Nelson*, 78-57, *Thompson* v. *Slukich*, 78-70, and *Thompson* v. *Peoples Liberty Bank, et al.*, 79-40) and in preparation for a pre-trial conference on September 10, 1980, Petitioner had visited the Kenton Circuit Court Clerk's Office to obtain portions of the records in Case B, 17936 and Case C, 18227 A & B. The Kenton Circuit Court Clerk's Office referred Petitioner to Judge Lape.*

In Case B, 17936, Judge Lape gave Petitioner a copy of an Order entered in that case, (App P. 11a, 13a) and a check for One Hundred ($100) Dollars, which was the return of the bond money deposited.

In Case C, 18227 A & B, (App. P. 15a) Judge Lape told Petitioner that the record in that case had been misplaced or lost. (See Motion for Leave to File Reply to Response to Petition for Writ of Mandamus, App. P. 8a) As of today, no final Orders have been filed in these cases.

In an unverified response to the Petition for a Writ of Mandamus, with reference to case 87-CI-773, styled *Thompson* v. *Covington Housing Development Corp.*, (Ex. A & B, App. P. 6a, 7a) Judge Lape refers to the case as *Thompson* v. *City of Covington* and admits he dismissed for failure to state a cause of action and, on August 24, 1988, (he) placed in the record the written Order overruling the (Petitioner's) Motion for Rehearing. (App. P. 19a)

With references to Case B, 17936 and Case C, 18227 A & B, Judge Lape claims, *inter alia*, that (1) . . . this matter was never presented to me or brought to my attention since my appointment as Circuit Judge on May 18, 1979, until I received the Petition for Writ of Mandamus filed on August 19,

---

* (Prior to being appointed Kenton Circuit Judge on May 18, 1979, Judge Lape was an Assistant County Attorney and had acted as Attorney for the Commonwealth in another case where Petitioner had alleged that charges were brought in bad faith and were mere false and malicious prosecution to aid and abet Peoples Liberty Bank in the forcibly taking of real property.)

1988, by Petitioner; (2) Petitioner has misstated and alleged under oath these allegations which are blatant falsehoods; and (3) prayed for an Order of the Honorable Court to issue a rule against Petitioner, Eddie Thompson, Jr., to show cause why he should not be held in contempt of Court for making false affidavits.

In reply to Judge Lape's response (App. P. 8a) Petitioner informed the Court by affidavit that Judge Lape failed to serve upon Petitioner copies of the exhibit attached to his response to the petition and filed a copy of Order signed by Judge Lape in Case B, 17936, certified by the Kenton Circuit Court Clerk, (App. P. 11a, 13a)

Judge Lape made no effort to deny he signed the August 3, 1979 Order, or deny he told Petitioner the Record in 18227 A & B were lost or misplaced. (App. P. 11a, 15a)

The trial court (Kentucky Court of Appeals) denied the Petition for Writ of Mandamus without making a finding of fact as required by Ky Cr 52 (App. P. 16a)

The Kentucky Supreme Court affirmed, in an unpublished decision. (App. P. 17a)

REASONS FOR GRANTING THE WRIT

(1) Does a state court violate Article IV, § 1, U.S. Constitution, 28 U.S.C. 1738 and K.R.S. 422.040 when the state court judges refuse to give full faith and credit to the records and judicial proceedings of a federal or state court of the United States or the records and judicial proceedings of its own courts?

In Case A, *Thompson* v. *Covington Housing Development Corporation*, No. 87-CI-773, Petitioner sought to enforce a Federal Judgment. (App. P. 7a)

> Valid Judgments of Federal Courts, just as valid Judgments of State Courts, must be given full faith and credit. 28 U.S.C. § 1738, Article IV, § 1, U.S. Constitution; *Transamerica Trade Co.* v. *McCollum Aviation*, 424 N.E. 2d 740.

and

> An authenticated copy of a Judgment attached to a petition to enforce that Judgment creates a presumption of that Judgment's validity and its entitlement to full faith and credit and is sufficient, in itself, to establish a prima facie case for enforcement. The fact that the Judgment was taken by default does not defeat the presumption of its validity. 28 U.S.C. § 1738, Article IV, § 1, U.S. Constitution; *First National Bank of Libby, Montana* v. *Rector*, 710 S.W. 2d 100 (CA Texas 1986).

Article IV, § 1 U.S. Constitution provides,

> Full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof.

28 U.S.C. § 1738 provides,

> Such acts, records, and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its territory or possession as they have by law or usage in the courts of such states, territory or possession from which they are taken.

In Response to the Petition for Writ of Mandamus, with reference to Case A, No. 87-CI-773, Judge Lape erroneously referred to the case as *Thompson* v. *City of Covington* instead of *Thompson* v. *Covington Housing Development Corporation*. (Ex. A & B, App. P. 6a, 7a)

Judge Lape said, "He (Respondent) entered an Order dated April 13, 1988, dismissing (Petitioner's) complaint (supplemental pleadings) for failure to state a cause of action, said Order being a final appealable Order with no just cause for delay." What happened to the Order he entered on June 1, 1987? (Ex. B, App. P. 7a)

> Court may not consider collateral attacks on obligation underlying judgment of court . . . . Judgment replaces and extinguishes that obligation. *Peters Production* v. *Desnick Broadcasting*, 429 N.W. 2d 654 (Mich. App. 1988)

The Judgment is evidence of an established demand which, standing alone, is conclusive between the parties to it.

Judge Lape continues, "Petitioner filed a pleading styled Motion for Rehearing on April 19, 1988, Defendant City of Covington, filed a Response to Motion for Rehearing on April 21, 1988; and on April 23, 1988, a pleading styled, Reply to Mr. McMurtry's Response to Motion for Rehearing was filed. The Respondent Court reviewed the file on August 24, 1988, and determined that no written Order had been docketed, although an *ORAL ORDER* overruling the Motion for Rehearing was made on May 2, 1988 at the regular Motion Docket of this Court. On August 24, 1988, this Respondent

placed in the record the written Order overruling the (Petitioner's) motion." (App. P. 19a)

Arguendo, Judge Lape did enter an *ORAL ORDER* on May 2, 1988, what was the effective date of that Order. Obviously, it is the day he put it in writing.

Now that Judge Lape entered an Order on August 24, 1988, (App. P. 19a), what mitigating effect did the Order have on the judgment? (App. P. 7a)

> Order of Court which did not destroy or otherwise militate against existence of liens claimed by creditors . . . was not a final or appealable Order and creditors had right to proceed further in action in order to enforce their lien claims. *Wenk* v. *Ruby*, 431 S.W. 2d 302 (Ky CA 1968).
>
> The fact that the Writ of Execution was sought on a Judgment rendered in a court of the United States, sitting within the state of (Kentucky) instead of one of the state courts is immaterial. *Hancock National Bank* v. *Farnum*, 176 U.S. 640.
>
> Jurisdiction to render the Judgment having been established or being presumed, the full faith and credit clause precludes any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principle upon which the Judgment is based. *Milliken* v. *Meyer*, 311 U.S. 457.
>
> When a state court refuses (full faith and) credit to the judgment . . . because of its opinion of the nature of the cause of action, or the Judgment in which it is merged, an asserted federal right is denied and the sufficiency of the grounds of denial are for the Supreme Court of the United States to decide. *Titus* v. *Wallick*, 306 U.S. 282.
>
> The faith and credit given is not to be niggardly but generous, full. (L)ocal policy must at times be required to give way, such "is part of the price of our federal

system" this constitutional purpose promotes unification, not centralization. It leaves each state with power over its own courts, but binds litigants, wherever they may be in the nation, by prior orders of other courts with jurisdiction. One trial is enough. The principals of res judicata apply to questions of jurisdiction as well as to other issues as well to jurisdiction of the subject matter as of the parties." The federal purpose of the clause make this court, for both state and federal courts, the final arbiter when the question is raised as to what is a permissible limitation on the full faith and credit clause. *Johnson* v. *Muelberger*, 340 U.S. 581.

Where the only question before the court was whether the Judgment of the (federal) court was entitled to full faith and credit, the only place to which the lower court could correctly inquire was to the face of the Judgment and the record of the federal court; the question was one of law, not one of fact, which the lower court possessed the power and authority to resolve. *Abbott* v. *Maranga*, 567 S.W. 2d 312 (CA KY 1978).

The constitutional command of full faith and credit as implemented by Congress requires that, "Judicial Proceeding . . . shall have the same full faith and credit in every court within the United States . . . as they have by law or usage in court of state . . . from which they are taken," *Durfee* v. *Duke*, 375 U.S. 106 (1963).

The Honorable Raymond E. Lape, Jr., Circuit Court Judge, filed a Response to the Petition for a Writ of Mandamus, Pro Se. Petitioner filed a motion for leave to file a reply to the Response to the Petition for Writ of Mandamus. (App. P. 8a) Petitioner informed the trial court (Kentucky Court of Appeals), *inter alia*, that Judge Lape's Response was not in good faith.

After ordering the reply filed the court denied the Petition for Writ of Mandamus without making any finding of fact. (App. P. 16a)

Civil Rule 52(a) in part provides,

> In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and Judgment shall be entered pursuant to Rule 58.

CR 76.36(7)(h) provides,

> Briefs in response to an appeal or cross-appeal *shall be required.* Such briefs *shall* be filed in accord with the provisions of CR 76.12(2)(a) and (b).
>
> Where an appeal is taken against a judge in the Court of Justice and concerns performance of an official act, the party appealing *shall* serve notice on the real party in interest as defined in this Rule, Section (8), who *shall* then be required to file a brief on behalf of the judge against whom the appeal or cross-appeal is taken; provided, however, no attorney shall be required or permitted to file a brief where to do so would conflict with the interest of his client.

CR 76.36(8) provides that,

> For purpose of this Rule only, the term "real party in interest" is any party in the Circuit Court action from which the original action arises who may be adversely affected by the relief sought pursuant to this Rule.

It is undisputed that the City of Covington is "real party in interest' in the three (3) cases involved here and were served as such. It is also clear that the City of Covington filed no brief on behalf of Judge Lape.

> The Rules covering briefs are designed to aid the Court in reaching a prompt and proper decision of the appeal . . . Hence as Appellant's statement was not contested, it will be accepted as correct. *Copley* v. *Craft*, 341 S.W. 2d 71 (KY 1960)

The Kentucky Supreme Court arbitrarily denied Petitioner's Oral Arguments on appeal because Petitioner is proceeding Pro Se.

In *Detroit Demolition Corp.* v. *Burrough Corp.*, 392 Mich 769, 219 N.W. 2d 613, held that,

> The Court of Appeals denied Appellant an essential element of the right of appeal when it decided appeal without giving parties an opportunity to present oral argument directed to the finding of the trial court.
>
> A body of law has developed that embraces the Rule that Pro Se complaints are to be liberally construed. *Haines* v. *Kerner*, 404 U.S. 519, 520 (1971)

Turning to cases B, 17936, (App. P. 11a, 13a) we have an Order signed by Judge Lape. The Kenton County Clerk certified that the Order was entered. Judge Lape makes no effort to deny that it is not his signature on the Order or that he (Judge Lape) did not give the copy of the Order to Petitioner.

In Case C, 18227 A & B, Judge Lape makes no effort to deny that he told Petitioner that the file in 18227 A & B had been lost.

Neither does Judge Lape explain why he did not serve copies of exhibits attached to his Response to the Petition for Writ of Mandamus.

In affirming the Court of Appeals, the Kentucky Supreme Court in reference to case A, 87-CI-773 *Thompson* v. *Covington Housing Development Corp.*, said: "The first case was a civil action brought by Thompson (Petitioner) against the City of Covington and others. Appellant (Petitioner) has argued that no final order was entered. The record reveals otherwise. Appellee (Judge Lape) entered an order on April 13, 1988, which dismissed Appellant's (Petitioner's) complaint for failure to state a cause of action. The order on its face was deemed final and appealable. Appellant filed a motion for rehearing which was orally overruled on May 2, 1988. A writ-

ten order to that effect was entered on August 24, 1988." (App. P. 19a) (Who deemed what Order final and appealable?)

The material facts of this case are misquoted by the Kentucky Supreme Court. The Kentucky Court of Appeals did not find as a matter of fact or law that Judge Lape entered an Order that was deemed final and appealable.

Petitioner sought to collect a Federal Judgment (Ex. A & B, App. P. 6a, 7a) in State Court. Judge Lape refused to give full faith and credit to the judgment.

Put another way, does the order entered by Judge Lape on June 2, 1987, (App. P. 2a) April 13, 1988, May 2, 1988 or August 24, 1988 (App. P 19a) militate against the federal judgment. The answer is a resounding no. See *Titus* v. *Wallick*, 306 U.S. 282; *Johnson* v. *Muelberger*, 340 U.S. 581; *Abbott* v. *Maranga*, 567 S.W. 2d 312

Turning to the two (2) cases involving alleged criminal prosecution of Petitioner and his wife to aid and abet Peoples Liberty Bank and Richard Nelson in an illegal foreclosure, cases B, No. 17936 and case C, No. 18227 A & B, (App. P. 11a, 13a, 15a) the Kentucky Supreme Court saith, "These cases were brought in the old Covington Police Court back in 1977. Appellee (Judge Lape) then was not the judge of that court, and subsequently has never been the judge of record in either of these cases. Appellee (Judge Lape) was, however, the prosecuting attorney in both of these cases and therefore would not have been qualified to enter any Orders as Circuit Judge in later appeals, and is not now qualified to do so." (App. P. 17a)

Again the court has misquoted the facts. These cases were brought in the old Police Court back in 1977. But, Judge Lape was not the prosecutor in these two (2) cases. Judge Lape was prosecutor in 78-M-1186 *Commonwealth* v. *Thompson*, another case where Petitioner was allegedly criminally prosecuted to aid and abet Peoples Liberty Bank

and Richard Nelson in an illegal foreclosure. Judge Lape was appointed Circuit Judge on or about May 18, 1979. Petitioner alleged under oath that Judge Lape told him (Petitioner) that he (Judge Lape) did not know where case # 18227 A & B was but Judge Lape had given Petitioner a copy of the order he (Judge Lape) had signed in case # 17936, (App. P. 11a) This order is certified by the Clerk of the Kenton Circuit Court. (App. P. 13a) This order, signed by Judge Lape, is entitled to full faith and credit in the Kentucky Court of Appeals as well as the Kentucky Supreme Court. Article IV, § 1, U.S. Constitution, 28 U.S.C. § 1738, *Milliken* v. *Meyer*, 311 U.S. 457.

> The right of a litigant to be heard is one of the fundamental rights of due process of law. A denial of the right requires a reversal. *Hovey* v. *Elliot*, 42 L ed 215
>
> Oral arguments . . . are encouraged by appellate courts in that they assist reviewing courts to fuller understanding of theories and issues on appeal. *Edmonds* v. *Stratton*, 457 S.W. 2d 228 (Mo. 1970)

The Kentucky Constitution § 1, provides, *inter alia*:

> All men are by nature, free and equal, and have certain inherent unalienable rights, among which may be reckoned:
>
> Fifth: The right of acquiring and protecting property.
>
> Sixth: The right of assembling together in a peaceable manner for their common good, and of applying to those invested with the power of government for redress of grievances or other proper purposes, by petition, address or remonstrance.

Section 2 provides:

> Absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority.

Section 14 provides:

> All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

The Kentucky Constitution § 26 provides:

> To guard against transgression of the high powers which we have delegated, we declare that everything in this Bill of Rights is excepted out of the general powers of government, and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void.

> First Amendment, U.S. Const. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to Petition the Government for a redress of grievances.

> Fourteenth Amendment, U.S. Const. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Judge Lape's intentions in entering the Order on August 3, 1979 (App. P. 11a, 13a) placing Patricia Thompson on her own recognizance until further Order of the Court is questionable. Judge Lape's intentions in entering the Order on June 2, 1987 (Ex. B, App. P. 7a) overruling all pending motions of the parties is questionable. The only party with a motion before the Court was Petitioner's motion to compel the Kenton Circuit Court clerk to issue a Writ of Execution on a Federal Judgment. (Ex. A, App. P. 6a) "Justice must satisfy the appearance of justice." *Re: Murchison*, 349 U.S. 133, 75 S Ct 123, 99 L ed 942.

CONCLUSION

The facts of this case are not in dispute. Judge Lape nor the real party in interest, (CR 76.36(8)) filed a brief in the appeal in the Kentucky Supreme Court. Yet, the Kentucky Supreme Court reached two (2) inconsistent conclusions. In Case A, 87-CI-773, Judge Lape could enter an Order militating the judgment, but the record shows he (Judge Lape) did not. Where is the order?

In Case B and Case C, Judge Lape could not enter any orders. Yet, Petitioner presented a copy of an Order signed by Judge Lape, (App. P. 11a) placing Petitioner's wife on her own recognizance until further Orders of the court, dated August 3, 1979. No further Order has been signed.

Petitioner suggests that a denial of a hearing in the Kentucky Court of Appeals and denial of oral arguments in the Kentucky Supreme Court pursuant to Ky CR 76.16(4), simply because Petitioner is proceeding Pro Se is contra to the Kentucky Constitution § 1, 2, 14, 26 and the First and Fourteenth Amendments to the U.S. Constitution.

This court should grant Certiorari and reverse the Kentucky Supreme Court, with instruction to give full faith and credit to the federal judgment (Ex. A, App. P. 6a), and to its own State Court records and judicial proceedings (App. P. 11a, 13a, 15a) by granting the Writ of Mandamus and directing Judge Lape to enter appropriate orders in Case A, 87-CI-773, Case B, 17936 and Case C, 18227 A & B.

Eddie Thompson, Jr.

APPENDIX

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

FILE NO. _____

EDDIE THOMPSON, JR.
PETITIONER

vs.

HON. RAYMOND E. LAPE
CIRCUIT JUDGE
RESPONDENT

PETITION FOR WRIT OF MANDAMUS

Petitioner, pursuant to the provisions of Kentucky Civil rule 76.36, respectfully pray that this Honorable Court issue a Writ of Mandamus to the Honorable Raymond E. Lape, Kenton Circuit Judge, to show cause, if there by any, why he refuses to issue a final and appealable ORDER AND JUDGMENT in following styled case;

(A) Eddie Thompson, Jr. V Covington Housing Development Corporation, 87-CI-773

(B) Commonwealth V Patricia Thompson, Circuit Court # 17936

(C) Commonwealth V Eddie Thompson, Jr., Circuit Court #18227 A & B as provided in KRS 454.350.

As grounds therefore, Petitioner, first being duly cautioned and sworn and states as follows;

(1) On May 7, 1987, petitioner filed a supplemental

pleading styled Eddie Thompson, Jr. V Covington Housing Development Corporation (A).

(2) On May 15, 1987, Mr. Murtry, an Assistant City Solicitor filed a motion to dismiss on behalf of the City of Covington, Joseph Condit, and Ronald Turner, even through the City of Covington, Joseph Condit and Ronald Turner were not named as parties in the supplemental pleading.

(3) On May 21, 1987, responded to Mr. Murtry's motion to dismiss and filed a motion to compel the Court Clerk to issue a Writ of Execution.

(4) On June 1, 1987, Judge Lape Held a hearing where petitioner informed the Honorable Judge Lape that Mr. Murtry had no standing to be before the court to argue for a dismmiss by parties who were not named in the complaint or oppose the Court Clerk performing his duty.

(5) With the knowledge that Mr. McMurtry had no standing in the court at the time, Judge Lape told Mr. McMurtry to prepare an ORDER OVERRULING denying any relief.

(6) Mr. McMurtry Prepared an order dismissing all pending motions of the parties.

(7) Reconizing Mr. McMurtry's efforts were not in good faith, Judge Lape changed dismissed to overruled.

(8) When the Clerk listed the ORDER, it was list as Order over-ruling Defendant's motion to dismiss, when in fact the Defendant (Covington Housing Development Corp) had not filed any motion to dismiss.

(9) On November 30, 1987, Petitioner filed an amended Complaint naming in addition to the Covington Housing Development Corp, the City of Covington, Ronald Turner, the Mayor; and Joseph Condit, the City Solicitor.

(10) On November 30, 1987, Petitioner also propounded interrogatories to defendants.

(11) On December 18, 1987, Mr. McMurtry filed a Motion to Dismis and a Motion for Judgment on the Pleadings.

(12) On December 29, 1987, Petitioner move the court to

compel Defendant to answer interrogatories, which still have not been ruled on.

(13) On December 30, 1987, Petitioner filed a reply to defendants' motion to dismiss and judgment on the pleading.

(14) On March 10, 1988, Judge lape held a hearing where it was undisputed the judgment against the Housing development Corporation was valid, the City of Covington was liable, and that City Official had wrongful used their Offices in an attempt to prevent petitioner from collecting the Judgment.

(15) On April 13, 1988, the court entered an order signed by Judge Lape dismissing petitioner claim with prejudice.

(16) Since Judge Lape obviously misunderstood the nature of the instant proceeding, Petitioner filed a timely Motion for rehearing.

(17) At a hearing on May 2, 1988 Petitioner informed the court on the record before the court it was a reversible error to dismiss this case, the defendants had not answerred the complaint or interrogatories as required by KRS 426.381, 426.382.

(18) Petitioner inform the Honorable Judge Lape that Mr. McMurtry's claims were to promote racial discrimination in city policies.

(19) Petitioner also inform the Honorable Judge Lape when Defendant move to dismiss and for judgment on the pleadings required the court, in the absence of legal reason not to, to rule on petitioner's pleading and not to so was reversible.

(20) Petitioner requested the court to enter finding of facts and to cite a case the court was relying upon to suppott its' decision.

(21) Judge Lape has wilfully refuse to enter an order ruling on the Motion for rehearing.

(22) This is not the first case Petitioner has been involved in where Judge Lape refuse to enter a final appealable order.

(23) In Circuit Court Case # 17936 and # 18227 A & B Com-

monwealth V Thompson Judge Lape refused to entered a final appealable ORDER

(24) Prior to Judge Lape getting these cases, City Officials had been able to secure continuances. (City officials had secured convictions in police court without any evidences)

(25) After being made aware of the facts Judge Lape decided not to ruled on these cases. (Defendants were entitled to a new trial in Circuit court.)

(26) This Denied Defendants the opportunity to show that the City had brought the charge in bad faith.

(27) Judge Lape's refusal to enter a final and appealable orders in these cases are a violation of KRS 454.350.

/s/ EDDIE THOMPSON, JR.

Subscribed and sworn to before me this 19th day of August. 1988

My Commission Expires: 3-16-92

/s/ MARILYN SMITH
Notary

Wherefore, Petitioner pray;

(1) The Court ORDER the Honorable Judge Lape to enter a final appealable Order pursuant to KRS 454.350, with due regards for Civil Rules 52 and 58

(2) For his Cost herein expended.

(3) For all other good and proper relief he may be entitled to.

/s/ EDDIE THOMPSON, JR.

QUESTIONS PRESENTED

Can a Circuit Judge continuously refuse to enter final judgment as required by KRS 454.350?

Under statute setting forth time within which Judge, Commissioner or hearing officer must issue judgment or report certification of reason delay occurs, to aviod prolonged indecision, madatory Writ should be used to rectify situation and if this be to no avail, then extreme remedy of removal is provided. KRS 454.350 Dubick V dubick 652 S.W. 2d 652 (CA Ky 1983)

Mandamus is an extraordinary remedy that lies to confine a lower court to stay within its jurisdiction or to compel it to perform ministerial functions. Weber V Coney 642 F 2d 91

/s/ EDDIE THOMPSON, JR.

[Copies sent to the Honorable Raymond E. Lape, Jr., Kenton Circuit Judge, Room 509, County Building, Covington, Ky 41011; Mr. Denny Bowman and Mr. Joseph Condit, 18 Pike Street, and Mr. Stephen T. McMurtry, 308 Greenup Street, Covington, Ky. 41011, Mr. Don Buring, Commonwealth Attroney, County Building, Covington, Ky 41011]

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
COVINGTON

CIVIL NO. 77-35

EDDIE THOMPSON, JR.
PLAINTIFF

vs.

COVINGTON HOUSING DEVELOPMENT CORPORATION
DEFENDANT

DEFAULT AND JUDGMENT

DEFAULT

The defendant, Covington Housing Development Corporation, having failed to answer or otherwise plead — an entry of DEFAULT be and hereby is entered in favor of the plaintiff against said defendant, COVINGTON HOUSING DEVELOPMENT CORPORATION.

JUDGMENT

Pursuant to the hearing held on JUNE 2, 1980, DEFAULT JUDGMENT be and hereby is entered against the defendant, COVINGTON HOUSING DEVELOPMENT CORPORATION, in the amount of $53,000.00, and his costs herein expended, plus interest at the rate of 8% per annum from the date of this judgment, until paid.

This 2d day of June, 1980.

/s/ WILLIAM O. BERTELSMAN
JUDGE

[DULY CERTIFIED BY LESLIE G. WITMER]

EXHIBIT B

KENTON CIRCUIT COURT
FIRST DIVISION

CASE NO. 87-CI-773

EDDIE THOMPSON, JR.
PLAINTIFF

vs.

COVINGTON HOUSING DEVELOPMENT CORP.
DEFENDANTS

ORDER

(Entered June 2, 1987)

This matter came before the Court on June 1, 1987 and the Court being sufficiently advised in the premises,

IT IS ORDERED and ADJUDGED that all pending motions of the parties are ~~dismissed~~ [overruled].

/s/ RAYMOND E. LAPE, JR.
JUDGE, KENTON CIRCUIT COURT
FIRST DIVISION

Order of Distribution:

Mr. Eddie Thompson, pro se
Hon. Stephen T. McMurtry,
Attorney for Joseph Condit,
Ronald Turner and City of Covington, Ky.

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS
FILE NO. 88-CA-1782

EDDIE THOMPSON, JR.
PETITIONER

V

HONORABLE RAYMOND E. LAPE
CIRCUIT JUDGE
RESPONDENT

MOTION FOR LEAVE TO FILE REPLY TO RESPONSE TO PETITION FOR WRIT OF MANDAMUS

Comes now Eddie Thompson, Jr. Petitioner herein, and move the court for leave to file a reply to the Honorable Judge Raymond E. Lape's response to Petition for Writ of Mandamus. The misstatements in Judge Lape's response to Petition for Writ of Mandamus make it imperative that Petitioner file a Reply.

/s/ EDDIE THOMPSON, JR.

AFFIDAVIT

Comes now, Eddie Thompson, Jr., affiant herein, first being duly cautioned and sworn and states as follows;

(1) Exhibits A, B, C was not attached to the copy of the Response to Petition for Writ of Mandamus Judge Lape served on me.

(2) For the pass seven (7) or eight (8) years, the Clerk's Office has been telling me that these files had been lost. Kenton Circuit # 17936 & # 18227 A & B

(3) After requesting and receiving the Exhibits from the Court of Appeals, I Requested the Kenton Circuit Court to Certify that the records in Criminal cases # 17936 and # 18227 A & B were lost.

(4) On September 1, 1988, I was shown the files in cases # 17936 and # 18227 A & B.

(5) In 1980, I had visited the Kenton Circuit Clerk's Office seeking the files in Case Nos. 17936 and 18227 A & B for my federal court trial

(6) The Clerk's office told me that no one knew where case file # 18227 A & B was but Judge Lape had case # 17936. See Exhibits 2 & 3

(7) I visited Judge Lape's chambers

(8) Judge Lape said he did Not know where Case file # 18227 A & B was.

(9) In 17936, Judge Lape gave me a copy of an order, Exhibit 1) and the Hundred Dollars that I had deposited as a Cash Bond for Patricia Thompson.

(10) The Records of the Kenton Circuit Court Clerk Show that the Order, Exhibit 1, had been entered by the Clerk's Office on August 3, 1979. (See Exhibit 2)

(11) When I checked case file # 17936 on September 1, 1988, The Order signed by Judge Lape (Exhibit 1) was not in the file. See Exhibit 2

(12) Judge Lape's Statement that, ". . . this matter was not brought to my attention since my appointment as circuit Judge on May 18, 1979, until I received the Petition for Writ of Mandamus filed on August 19, 1988 by Petitioner, Eddie Thompson, Jr.," is totally untrue.

(13) Any Claims by Judge Lape that I have not ask Judge Lape to rule on these cases are false.

(14) When I was preparing for a pretrial conference, on September 10, 1980, I related to Judge Lape that I needed the files in Kenton Circuit Court cases # 17936 and # 18227 A & B to show that Official of the City of Covington had prosecuted me and my wife to assist the bank in an illegal foreclosurer.

(15) When Prosecutors did not show for the trial (18227 A & B) set for April 5, 1978, it was clear to me that city officials were admitting that the charges in the cases were false and should have been DISMISSED. See Ex. 3

(16) On April 20, 1978, I filed a motion to dismiss.

(17) On or about April 15, 1978, three (3) Covington police Officers (Finan, Epperson, and Tucker) beat me and threatened to put me in the river. 78-M-1186

(18) On or about April 15, 1978, I was charged with assault on a police officer, resisting arrest, disorderly conduct, and DUI. 78-M-1186

(19) Officer Epperson, who had attempted to strike me in the head with his slab stick, claimed I had kicked him in the groin when in fact a fellow officer, in an attempted assault on me, had struck Officer Epperson with his night stick.

(20) At the time that the Commonwealth prosecuted me on these false charges, Judge Lape was an assistant county attroney, who prosecuted the case.

(21) With the knowledge that there was no evidence to support any of the charge against me, Prosecutor Lape conspired to convict me.

/s/ EDDIE THOMPSON, JR.

Scribed and sworn to before me this 4th day of September, 1988

/s/ ISIAH SMITH
Notary

My Commission expires; 3/16/92

EXHIBIT 1

(Filed in Clerk's Office August 3, 1979)

KENTON CIRCUIT COURT
FIRST DIVISION

COMMONWEALTH OF KENTUCY,
FOR THE USE AND BENEFIT OF:

CITY OF LAKEVIEW VS. CHARLES E. LARKIN #16613
KENTON COUNTY JUVENILE DIVISION VS. WILLIAM UPTON, JR. #17129
CITY OF ERLANGER VS. GARY S. KLUG #17156
CITY OF LAKESIDE PARK VS. ARTHUR HAUBNER #17195
CITY OF ELSMERE VS. WILTON B. CUPP #17371 A&B
CITY OF LAKESIDE PARK VS. STEPHEN HOFF #17372
CITY OF COVINGTON VS. DARYL HAMILTON #17788
CITY OF COVINGTON VS. RALPH DOZIER #17901
CITY OF COVINGTON VS. JOHN WEST #17920
CITY OF COVINGTON VS. PATRICIA THOMPSON #17936
CITY OF COVINGTON VS. RUTH OTTO #17962
CITY OF COVINGTON VS. RONALD CECIL #17976
CITY OF COVINGTON VS. LARRY BUSH #17996 A
CITY OF COVINGTON VS. RONNIE BUSH #17996 B
CITY OF COVINGTON VS. LARRY BUSH #18042 A
CITY OF COVINGTON VS. RONNIE BUSH #18042 B
CITY OF FT. MITCHELL VS. KAYE BLEVINS #17812

This matter is before the Court for review of outstanding appeals from the various Police Courts no longer in existence.

The records reveal the Kenton Circuit Clerk is in possession

of various cash bonds dating from 1974 through 1977 and inquiries having been made for the return of said cash bonds by the effected individuals.

IT IS THEREFORE ORDERED BY THE COURT that the cash bonds in the above-styled cases assigned to this Court shall and hereby are ordered to be returned to the depositors and all defendants so effected by said bonds are hereby placed on their own recognizance until further Orders of this Court.

/s/ RAYMOND E. LAPE, JR.

Copy: Patricia & Eddie Thompson, Jr.
City of Covington

EXHIBIT 2

KENTON CIRCUIT COURT DOCKET ENTRIES

COMMONWEALTH OF KENTUCKY,
vs.
EDDIE THOMPSON

Case No. 17932

Charge: THEFT BY DECEPTION

March 3, 1977. Indictment returned by Kenton County Grand Jury on charge of Theft by Deception.
June 23, 1978. Comm'th. moved for Order dismissing; it is so ordered and same is hereby dismissed.

COMMONWEALTH OF KENTUCKY,
vs.
PATRICIA THOMPSON

Case No. 17936

Feb. 2, 1977. A Transcript of Appeal filed from Judgment from Cov. Police Court; Appellant fined $100.00 & costs on charge of Vio. of Cov. Housing Code 0-53-05. Appeal bond executed.

Apr. 4, 1977. Ordered continued and rescheduled for trial de novo, Mon., Apr. 25, 1977.

May 16, 1977. Ordered continued and rescheduled for trial, de novo, Mon., May 23, 1977.

May 23, 1977. Testimony having been adduced; case is submitted.

Aug. 3, 1979 Ordered that cash bond be returned to depositor & appellant placed on o/r.

[CERTIFIED BY ED. F. SCHROEDER]

EXHIBIT 3

KENTON CIRCUIT COURT DOCKET ENTRIES

COMMONWEALTH OF KENTUCKY,
vs.
EDDIE THOMPSON

Case No. 18227

Charge: VIOL. CITY OF COVINGTON ORDINANCES
O-53-65 O-9-76 O-64-76

Nov. 3, 1977. A Transcript of Appeal filed by Judgment from Cov. Police Court. Appellant fined $100.00 & costs on charge of Vio. of City Ord. O53-65; O-9-76 & fined $100.00 & costs on charge of Vio. City Ord. O-64-76. Appeal Bond executed.

Dec. 2, 1977. Ordered continued and rescheduled for trial de novo, Weds. 12/28/77.

Dec. 29, 1977. Ordered continued and rescheduled for trial, de novo, Mon. 1/30/78

Jan. 30, 1978. Ordered continued & rescheduled for trial, de novo, Mon. 2/27/78.

Feb. 27, 1978. Defense counsel moved for Trial WITH JURY, which motion was sustained and case set for trial, with jury, Tues. April 4, 1978 @ 9:30 a.m.

Apr. 20, 1978. Comes Appellant & files Motion to Dismiss and set date for oral argument and Brief in Support of Motion.

[CERTIFIED BY ED F. SCHROEDER]

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 88-CA-1782-OA

EDDIE THOMPSON, JR.
PETITIONER

v.

RAYMOND LAPE, JUDGE
KENTON CIRCUIT COURT
RESPONDENT

AN ORIGINAL ACTION
REGARDING KENTON CIRCUIT COURT

ORDER

BEFORE: McDONALD, LESTER, and DYCHE, JUDGES.

Having considered the petition for writ of mandamus, the response thereto, and petitioner's motion for leave to file a reply to the response, and being otherwise sufficiently advised, the Court ORDERS the motion for leave to file a reply be GRANTED. Petitioner's tendered reply is ORDERED FILED the date of entry of this order, and was considered by this Court. The petition for writ of mandamus is DENIED.

ENTERED: OCTOBER 6, 1988

/s/ MICHAEL O. McDONALD
JUDGE, COURT OF APPEALS

RENDERED: March 16, 1989
NOT TO BE PUBLISHED

SUPREME COURT OF KENTUCKY

88-SC-877-MR

ON REVIEW FROM COURT OF APPEALS
No. 88-CA-1782-OA
(Kenton Circuit Court #87-CI-773;
Covington Police Court #18227-A & B, and #17936)

EDDIE THOMPSON, JR.

APPELLANT

v.

RAYMOND E. LAPE, JUDGE
KENTON CIRCUIT COURT

APPELLEE

MEMORANDUM OPINION OF THE COURT AFFIRMING

Eddie Thompson, Jr., brings this appeal from an original action filed in the Court of Appeals where he sought a writ of mandamus to compel the appellee, Raymond E. Lape, Judge of the Kenton Circuit Court, to enter final orders in three cases. The Court of Appeals denied appellant's petition, and we affirm the Court of Appeals.

The first case was a civil action brought by Thompson against the City of Covington and others. Appellant has argued that no final order was entered. The record reveals otherwise. Appellee entered an order on April 13, 1988, which dismissed appellant's complaint for failure to state a cause of action. The order on its face was deemed final and appealable. Appellant filed a motion for rehearing which was

orally overruled on May 2, 1988. A written order to that effect was entered on August 24, 1988.

The other two cases were prosecutions against the appellant and one Patricia Thompson for violations of Covington's housing code. These cases were brought in the old Covington Police Court back in 1977. Appellee then was not the judge of that court, and subsequently has never been the judge of record in either of these cases. Appellee was, however, the prosecuting attorney in both of these cases and therefore would not have been qualified to enter any orders as circuit judge in later appeals, and is not now qualified to do so. KRS 26A.015(2)(b).

The order of the Court of Appeals denying appellant's petition for writ of mandamus is hereby affirmed.

All sitting. All concur.

ATTORNEY FOR APPELLANT:

Eddie Thompson, Jr., Pro Se
P.O. Box 1221
Covington, Ky. 41011

ATTORNEY FOR APPELLEE:

Frederic J. Cowan
Attorney General

E. Douglas Richards
Assistant Attorney General
State Capitol Building
Frankfort, Ky. 40601

COMMONWEALTH OF KENTUCKY
SIXTEENTH JUDICIAL CIRCUIT
KENTON CIRCUIT COURT
FIRST DIVISION

NO. 87-CI-773

EDDIE THOMPSON, JR.,
PLAINTIFF,

VS.

COVINGTON HOUSING DEVELOPMENT CORPORATION, CITY OF COVINGTON, RONALD B. TURNER AND JOSEPH CONDIT,
DEFENDANTS.

ORDER

(Entered August 24, 1988)

This matter is before the Court on the Motion of the Plaintiff for Rehearing filed April 19, 1988, to be held on May 2, 1988, at the hour of 9:30 A.M.

The Defendants filed a Response to the Motion for Rehearing on April 21, 1988 and the Plaintiff filed a Reply to the Response on April 23, 1988.

This matter was heard at the regularly convened Motion Docket of this division and the Motion of the Plaintiff was overruled.

The Court, by Order of April 13, 1988, dismissed this matter with prejudice, determining that said Order was a final, appealable order, there being no just cause for delay.

This Order is being prepared to bring the file current with all pending matters.

So ORDERED this 24th day of August, 1988.

/s/ RAYMOND E. LAPE, JR.,
JUDGE

Distribution:
Original — Kenton Circuit Clerk's Office
One Copy — Mr. Eddie Thompson, Jr., pro se
One Copy — Hon. Stephen T. McMurtry

G

DISTRIBUTED
AUG 23 1989

Supreme Court
FILE
AUG 23 19
JOSEPH F. SPANIO
CLERK

NO. 88-2028

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

EDDIE THOMPSON, JR.,

Petitioner

vs.

HONORABLE RAYMOND E. LAPE, JR.,

Respondent

REPLY AND/OR SUPPLEMENTAL BRIEF

EDDIE THOMPSON, JR.
P.O. BOX 1221
COVINGTON, KY 41011
(606) 491-6278

COURT INDEX PRESS, INC. — 215 E. Ninth Street, Cincinnati, Ohio 45202 — (513) 241-1450

TABLE OF CONTENTS

	Page
Table of Contents	i
Reply and/or Supplemental Brief	1-4
Conclusion	5
Affidavit of proof of service	6
APPENDIX	
Mrs. V. Lynne Schroering's letter of July 6, 1989	1a
Mrs. V. Lynne Schroering's letter of June 29, 1989	2a

TABLE OF AUTHORITIES

Cases	Page
Dubick v. *Dubick*, 653 S.W. 2d 652, KY CA 1983	4
Knox County v. *Aspinwall*, 65 U.S. 735 (1861)	4
Van Riper v. *Jenkins*, 163 ALR 1343, 45 A2d 844	4

Constitutional and Statutory Authorities

First Amend. U.S. Const.	iii
Fourteenth Amend. U.S. Const.	iii
U.S. Supreme Court Rule 22.4	iii, 1
U.S. Supreme Court Rule 28.3	iii, 2

Page

KY Const. § 176 ..... IV, 3

KY Const. § 177 ..... IV, 3

KY Const. § 14 IV

K.R.S. 15.020 ..... IV, 3

K.R.S. 26A.015(3)(a) 4

K.R.S. 454.350 ..... V, 3, 4

KY SCR 4.300 (3) A (4) ..... VI, 5

KY CR 76.36(7)(h) ..... VI, 2, 5

KY CR 5.03 ..... VI, 3

FIRST AMENDMENT U.S. CONST.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievance.

FOURTEENTH AMENDMENT U.S. CONST.

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SUPREME COURT RULE 22.4

Upon the filing of a brief in opposition, or the expiration of the time allowed therefor, or express waiver of the right to file, the petition and brief, if any, will be distributed by the Clerk of the Court for its consideration. However, if a cross-petition for certiorari has been filed, distribution of both it and the petition for certiorari will be delayed until the filing of a brief in opposition by the cross-respondent, or the expiration of the time allowed therefor, or express waiver of the right to file.

SUPREME COURT RULE 28.3

Whenever any pleading, motion, *notice*, brief, or other document is required by these Rules to be served, such service may be made personally or by mail on each party to the proceeding at or before the time of filing. If the document has been produced under Rule 33, three copies shall be served on each other party separately represented in the proceeding. If the document is typewritten, service of a single copy on each other party separately represented shall suffice. If personal service is made, it may consist of delivery, at the office of counsel of record, to counsel or an employee therein. If ser-

vice is by mail, it shall consist of depositing the document in a United States Post Office or Mailbox, with first-class postage prepaid, addressed to counsel of record at his post office address. Where a party is not represented by counsel, service shall be upon the party, personally or by mail.

KENTUCKY CONSTITUTION § 14

All courts shall be open, and every person for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial or delay.

KENTUCKY CONSTITUTION § 176

The Commonwealth shall not assume the debt of any county, municipal corporation or political subdivision of the State, unless such debt shall have been contracted to defend itself in time of war, to repeal invasion or to suppress insurrection.

KENTUCKY CONSTITUTION § 177

The credit of the Commonwealth shall not be given, pledged or loaned to any individual, company, corporation or association, municipality, or political subdivision of the State.

K.R.S. 15.020

The attorney general is the chief law officer of the Commonwealth of Kentucky and all of its departments, commissions, agencies, and political subdivisions, and the legal adviser of all state officers, departments, commissions, and agencies, and when requested in writing shall furnish to them his written opinion touching any of their official duties, and shall prepare proper drafts of all instruments of writing required for public use, and shall exercise all common law duties and authority pertaining to the office of the attorney general under the common law, except when modified by statutory enactment. He shall appear for the Commonwealth

in all cases in the Supreme Court or Court of Appeals wherein the Commonwealth is interested, and shall also commence all actions or enter his appearance in all cases, hearings, and proceedings in and before all other courts, tribunals, or commissions in or out of the state, and attend to all litigation and legal business in or out of the state required of him by law, or in which the Commonwealth has an interest, and any litigation or legal business that any state officer, department, commission, or agency may have in connection with, or growing out of, his or its official duties, except where it is made the duty of the commonwealth's attorney or county attorney to represent the Commonwealth. When any attorney is employed for any said agency, the same shall have the approval of such agency before such employment.

K.R.S. 454.350

(1) Every circuit and district judge shall, when at all possible, issue a written judgment or order in all civil actions which have been submitted for final adjudication within ninety (90) days from the date the action was taken under submission.

(2) Where a report, findings, or recommendations of a commissioner or hearing officer are required by statute or rule as a prerequisite to an order or judgment by the circuit or district court the same shall be filed within ninety (90) days of the conclusion of the trial or hearing at which the commissioner or hearing officer presided.

(3) Every circuit and district judge shall at the end of every month certify in writing to the chief justice of the Supreme Court all cases which have been submitted for final adjudication for longer than ninety (90) days and have not been adjudicated and certify in writing to the chief justice of the Supreme Court the reason for the delay.

(4) Any district or circuit judge who knowingly violates any of the provisions of this section shall be subject to removal by the judicial retirement and removal commission.

KY SCR 4.300 (3) A (4)

A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

KY CR 76.36 (7) (h)

Briefs in response to an appeal or cross-appeal shall be required. Such briefs shall be filed in accord with the provisions of CR 76.12(2)(a) and (b).

Where an appeal is taken against a judge in the Court of Justice and concerns performance of an official act, the party appealing shall serve notice on the real party in interest as defined in this Rule, Section (8), who shall then be required to file a brief on behalf of the judge against whom the appeal or cross-appeal is taken; provided, however, no attorney shall be required or permitted to file such a brief where to do so would conflict with the interest of his client.

KY CR 5.03

Whenever any pleading or other paper is served under Rules 5.01 and 5.02, proof of the time and manner of such service shall be filed before action is to be taken thereon by the court of the parties. Proof may be by certificate of a member of the bar of the court or by affidavit of the person who served the papers or by any other proof satisfactory to the court. Such certificate or affidavit shall identify by name the persons so served.

NO. 88-2028

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

EDDIE THOMPSON, JR.,

Petitioner

vs.

HONORABLE RAYMOND E. LAPE, JR.,

Respondent

REPLY AND/OR SUPPLEMENTAL BRIEF

Comes now Petitioner and objects to the Office of the Attorney General of Kentucky and/or his Assistants filing briefs, letters and/or other documents on behalf of the Honorable Raymond E. Lape, Jr., Respondent herein or other litigants, wherein the Commonwealth of Kentucky has no "real interest or legal business," in the case.

On July 6, 1989, Mrs. V. Lynne Schroering, an Assistant Attorney General of Kentucky, wrote a letter to Mr. Joseph Spaniol, Jr., Clerk of the U.S. Supreme Court, on behalf of Respondent, expressly waiving Respondent's rights under Supreme Court Rule 22.4, to file a brief in opposition to the Petition for Writ of Certiorari, unless otherwise directed by this Court.[1] App. P. 1a

[1] When a party has failed to file a brief in opposition within the time allowed therefor or expressly waived his rights to file said brief, Supreme Court Rule 22.4 makes no provisions for the Court to enlarge the time to file a brief in opposition to a Petition for a Writ of Certiorari.

On June 29, 1989, Mrs. V. Lynne Schroering, wrote a letter to Mr. Spaniol, on behalf of Mr. Joseph Condit, and Judge Douglas Stephens, Respondents in *Thompson* v. *City of Covington, Peoples Bank, et al.*, Supreme Court No. 88-1965, waiving Respondents' rights, under Supreme Court Rule 22.4, to file a brief in opposition to the Petition for Writ of Certiorari, unless otherwise directed by the Court.[1] App. P. 2a.

Mrs. V. Lynne Schroering did not service a copy of her July 6 letter, App. P. 1a, or her June 29 letter (App. P. 2a), upon the appropriate parties as required by Supreme Court Rule 28.3.[2]

Mrs. Schroering's letter of July 6, should have been served upon Mr. Joseph Condit, City Solicitor, for the City of Covington, "real party in interest[2], Mr. Stephen T. McMurtry, Assistant City Solicitor, for City of Covington, and Judge Lape.

Mrs. Schroering's letter of June 29, should have been served upon Mr. Joseph Condit, City Solicitor for the City of Covington, real party in interest[2], Mr. Stephen T. McMurtry, Assistant City Solicitor and attorney of record for the City of Covington, Police Officer, Thomas Epperson, Todd Finan and Henry Warden; Mr. Martin Huelsmann, Attorney of record for John Elfers; and Mr. Richard Nelson, Pro Se and attorney of record for Peoples Liberty Bank and Ralph Haile.

Mrs. Schroering has neglected to make service as required by Supreme Court Rule 28.3; because service on the "real parties in interest" would show the Office of the Attorney General is rendering legal service to Judge Lape, The City of Covington, Mr. Joseph Condit, Judge Stephens and others in violation of KY CR 76.36(7)(h) and 76.36(8)[3], SCR 4.300

[2] Supreme Court Rule 28.3 requires that Notice be served on all interested parties.

[3] These Rules required that the City of Covington as the "real party in interest," file a Response to an Appeal in an accord with the provisions of KY

Canon (3) A (4), K.R.S. 15.020 and 454.350, and/or the KY Constitution §§ 176 and 177.

We may note that neither Mrs. Schroering, nor the Office of the Attorney General is Attorney of record in the trial court (KY Court of Appeals[4] for Judge Lape or claim any authority, duty or interest in attempting to defend Judge Lape's failure and/or refusal to give full faith and credit to a Federal Judgment, contrary to Article IV, § 1, 28 U.S.C. § 1738 and K.R.S. 422.040; and who refuses to enter a final Order in two (2) Criminal cases[5], pursuant to K.R.S. 454.350. See *Thompson* v. *City of Covington, et al.*, Supreme Court No. 88-1965. Complaint items Nos. 4(f), 27-33, App. P. 7a and 10a.

Arguendo, if Judge Lape entered a final Order in *Thompson* v. *Covington Housing Development Corporation*, Kenton

---

Cr 76.12(2)(a) . . . unless to do so would conflict with the interest of their client (Judge Lape). The failure and/or refusal on the part of the City of Covington to file a brief on behalf of the Honorable Raymond E. Lape admits a conflict. Mrs. Schroering's letters of July 6 and June 29, App. P. 1a and 2a, merely compound these conflicts of interest and abate the public interest and trust.

[4] Judge Lape proceeded Pro Se in the Kentucky Court of Appeals (trial court). Judge Lape neglected to serve a copy of his Response to the Petition for Writ of Mandamus as required by KY CR 5.03, which requires that service be made on all interested parties. (City of Covington, Mr. Joseph Condit, City Solicitor, City of Covington, Mr. Stephen T. McMurtry, Assistant City Solicitor and counsel of record) Usually the Court refuses to accept papers that are not served on the "real party in interest."

[5] These two (2) cases involve charges of alleged harassment and malicious prosecution by City Officials to aid and abet Richard Nelson and Peoples Liberty Bank in an alleged illegal foreclosure. At a pre-trial conference in Federal Court, Mr. Nelson admitted, inter alia, that (1) Peoples Liberty Bank lost the possessory action (*Thompson* v. *Peoples Liberty Bank*, Kenton County Court No. 33430, KY Court of Appeals No. 79-CA-1456-MR. See *Thompson* v. *City of Covington, et al.*, Supreme Court No. 88-1965, App. P. 18a) and (2) He (Nelson and Peoples Liberty Bank) hired City of Covington Police Officers, at a rate of five (5) dollars an hour, and a criminal attorney to forcibly take possession of Petitioner's home and personal possessions. The Federal Judge declined to decide the case because of the State Law issues involved, but the Federal Judge consolidated all claims and issues (Federal and State) before the Court.

Circuit Court No. 87-CI-773, why didn't Judge Lape or the City of Covington present that Order to the Court? Obviously no such Order exists.

With the knowledge that he (Judge Lape) had not entered a final Order in Kenton Circuit Court cases No. 17936[6] or 18227 A & B, and over Petitioner's objections, Judge Lape appointed the Honorable Jack Arnold[7] to hear *Thompson* v. *City of Covington, et al.*, Kenton Circuit Court No. 86-CI-1535, Supreme Court No. 1965, NR 13, 14, (App. P. 2a).

The Writ of Mandamus is a remedy to compel any person, Corporation, Public Functionary or Tribunal, to perform some duty required by law, where the party seeking relief has no other legal remedy and the duty sought to be enforced is clear and indisputable. *Knox County* v. *Aspinwall*, 65 U.S. 735, S.C. 24 How., 376-386.

Under Statute setting forth time within which Judge, commissioner or hearing officer must issue judgment or report certification of reason delay occurs, to avoid prolonged indecision, mandatory writ should be used to rectify situation and if this be to no avail, then extreme remedy of removal is provided. K.R.S. 454.350. *Dubick* v. *Dubick*, 653 S.W. 652.

In a private litigation, the Attorney General may intervene, (only) where the rights and interest of the people of the state are involved. *Van Riper* v. *Jenkins*, 45 A2d 844.

---

[6] The records of the Kenton Circuit Court reveal that the Clerk of the Court entered an Order signed by Judge Lape in *Commonwealth of Kentucky, for the use and benefit of, City of Covington* v. *Patricia Thompson*, No. 17936, on August 3, 1979. In said Order, Judge Lape ordered, inter alia, the cash bond returned to depositors, Patricia and Eddie Thompson, Jr., and placed Patricia Thompson on her own recognizance until further Order of his Court. The Records of the Kenton Circuit Court show that Judge Lape has entered no further Orders in said cases.

[7] K.R.S. 26A.015(3)(a) provides that, Any Justice or Judge of the Court of Justice disqualified under the provisions of this section shall be replaced by the Chief Justice.

CONCLUSION

The relief sought here is provide for by K.R.S. 454.350, KY CR. 76.36 and KY SCR 4.300 Canon (3) A (4).

The failure of Judge Lape to enter a final Order in these three (3) cases, deny Petitioner access to the Courts in violation of the KY Constitution § 14 and the First Amendment, U.S. Constitution, for which Petitioner has no other remedy.

The efforts by the Kentucky Attorney General are "ex parte" on behalf of the City of Covington and in violation of KY SCR 4.300 Canon (3) A (4) and KY CR 76.36(7)(h).

Respectfully Submitted,

Eddie Thompson, Jr.
P.O. Box 1221
Covington, KY 41011
(606) 491-6278

AFFIDAVIT IN PROOF OF SERVICE

Comes now Eddie Thompson, Jr., Petitioner herein, first being duly cautioned and sworn and states as follows:

On August ____, 1989, I deposited in the mail 3 copies of the instant Repy and/or Supplemental Brief, in duly addressed envelopes, with first class postage prepaid to:

Honorable Raymond E. Lape, Jr., Kenton Circuit Judge, Room 509, County Building, Covingtion, KY 41011

Mr. Joseph Codit, City Solicitor, City of Covington, 18 Pike Street, Covington, KY 41011

Mr. Stephen T. McMurtry, Assistant City Solicitor, City of Covington, 308 Greenup Street, Covington, KY 41011

Mr. Frederic Cowan, Attorney General, Mr. E. Douglas Richards, Assisstant Attorney General, Mrs. V. Lynne Schroering, Assistant Attorney General, Capitol Building, Frankfort, KY 40601

Mr. Jack Scott, Clerk, Kentucky Court of Appeals, 403 Wapping Street, Frankfort, KY 40601

Mr. Don Buring, Commonwealth Attorney, 6th Floor, County Building, Covington, KY 41011

Mr. Richard Nelson, 11 West 6th Street, P.O. Box 1209, Covington, KY 41011

Mr. Martin Huelsmann, 88 Thompson Avenue, Ft. Mitchell, KY 41017

Ms. Karla Katakis, Chief Legal Counsel, Administrative Office of the Court, 403 Wapping Street, Frankfort, KY 41011

The Solicitor General, Department of Justice, Washington, D.C. 20530.

_____
Eddie Thompson, Jr.

Subscribed and sworn to before me this _____ day of August, 1989.

_____ _____
My Commission expires Notary

APPENDIX

[LETTERHEAD OF OFFICE OF THE ATTORNEY GENERAL, COMMONWEALTH OF KENTUCKY]

July 6, 1989

Mr. Joseph F. Spaniol, Jr., Clerk
Supreme Court of the United States
1 First Street N.E.
Washington, D.C. 20543

Re: Eddie Thompson, Jr. v. Hon. Raymond E. Lape, Jr., Kenton Circuit Judge, No. 88-2028

Dear Mr. Spaniol:

The respondent, Hon. Raymond E. Lape, Jr., Kenton Circuit Judge, expressly waives his right under Rule 22.4 to file a brief in opposition to the Petition for Writ of Certiorari, unless otherwise directed by this Court.

Respectfully,

FREDERICK J. COWAN
ATTORNEY GENERAL

/s/ V. LYNNE SCHROERING
Assistant Attorney General
(502) 564-7600

VLS/mja
cc: Eddie Thompson, Jr.

[LETTERHEAD OF OFFICE OF THE ATTORNEY GENERAL, COMMONWEALTH OF KENTUCKY]

June 29, 1989

Mr. Joseph F. Spaniol, Jr., Clerk
Supreme Court of the United States
1 First Street N.E.
Washington, D.C. 20543

Re: Patricia and Eddie Thompson, Jr. v. City of Covington, et al., No. 88-1965

Dear Mr. Spaniol:

The respondents, Joseph Condit and Douglas Stephens, expressly waive their right under Rule 22.4 to file a brief in opposition to the Petition for Writ of Certiorari, unless otherwise directed by this Court.

Respectfully,

FREDERICK J. COWAN
ATTORNEY GENERAL

/s/ V. LYNNE SCHROERING
Assistant Attorney General
(502) 564-7600

VLS/mja
cc: Patricia & Eddie Thompson, Jr.